



Queensland Building Services Authority Submission Financial Services and Credit Reform Green Paper Property Spruikers

Background: The Queensland Building Services Authority (BSA) is an independent statutory authority established under the *Queensland Building Services Authority Act 1991* to regulate Queensland building industry in the interests of both contractors and consumers. As well as the *Queensland Building Services Authority Act 1991*, the BSA also administers the *Domestic Building Contracts Act 2000* and the *Building and Construction Industry Payments Act 2004*.

The BSA licences residential and commercial building contractors; manages complaints and disputes; provides consumer and contractor education and administers the Queensland Home Warranty Insurance Scheme.

As part of its licensing regime, the BSA requires contractors to comply with the Financial Requirements for Licensing Policy of the Queensland Building Services Board as approved under the *Queensland Building Services Authority Regulation 2003*. This policy is aimed at ensuring the viability of contracting businesses and thereby improving business and consumer confidence.

The BSA's Financial Requirements for Licensing Policy works to limit a contractor's allowable annual turnover in accordance with the contractor's net tangible assets. Licensees are required to provide financial reports certified by an approved person (generally an independent accountant) to the BSA on an annual basis, or more often if requested, to substantiate their financial position.

The BSA's experience with property spruikers:

In recent years, the BSA has become aware of a number of companies which have failed following rapid expansion after becoming involved with property spruikers. The most recent case, involving Real Property Constructions Pty Ltd resulted in over 200 consumers being left with incomplete contracts, over \$7 million being owed to unsecured creditors and a cost of over \$3 million in approved claims against the Queensland Home Warranty Scheme. In the past two years at least four other major building contractors have failed having had an association with wealth creation companies:

Company	Estimated cost to unsecured creditors	Approved claims against the Queensland Home Warranty Scheme as at 5/6/08
J Co Homes Pty Ltd	\$1.29 million	\$1,169,363
SNS Developments (Qld) Pty Ltd	\$4.06 million	\$3,426,256
Newport Homes Pty Ltd	\$4.9 million	\$1,232,420
Enric Pty Ltd	\$2.06 million	\$4,345,655

While the BSA is of the view that builder contractors could reasonably be expected to be more sophisticated in their response to property spruikers than inexperienced

property investors, it appears that some building contractors are persuaded to incorporate high commissions and guaranteed rental payments into their costs with the promise of "economies of scale" and continuous work. They may even be offered finance as an added incentive. As contractors take on more and more contracts, the time taken to complete the contracts is extended, further increasing costs. The end result is that the building contractor suffers losses and may eventually become insolvent leaving consumers with incomplete contracts.

The BSA has been hampered in its investigation of the effects of property spruikers on the construction industry by the confidentiality of agreements between building contractors, property spruikers and developers and the poor accounting practices of most of the failed contractors. In addition, property spruikers and their associates tend to be part of a network of related and associated entities that draw benefits from the sale of properties in different ways.

The *Property Agents and Motor Dealers Act 2000 (Qld)* limits the amount of commission which may be charged on the sale of real property in Queensland but does not limit the commission on construction contracts. When house and land packages are sold, agents may circumvent the *Property Agents and Motor Dealers Act 2000* by charging excessive commission on the construction contract.

The early payment of the commission on construction contracts as well as other enticements to investors such as guaranteed rental payments or a low deposit, disadvantages contractors by severely restricting cashflow in the early stages of construction.

Proposed action by the BSA:

To address this issue within the confines of its legislative authority and in addition to its normal activities in monitoring the business growth of licensees, the BSA is in the process of taking the following steps:

- Reviewing the *Domestic Building Contracts Act 2000 (Qld)* to:
 - require disclosure of commissions;
 - ensure more definite commencement and completion dates and
 - remove unfair provisions or provisions which favour the contractor and disadvantage consumers or investors.
- Educating contractors concerning the traps associated with rapid expansion and the experience of other who have been associated with wealth creation companies or property spruikers and reviewing the current business management course requirements.
- Educating consumers/investors about the risks associated with property investment particularly through companies that purport to act on behalf of buyers while accepting commission from sellers.

Options for Reform:

In commenting on options for reform, the BSA refers to the recommendations of the Parliamentary Joint Committee on Corporations and Financial Services Report, "Property Investment Advice – Safe as Houses?"

Generally, the BSA is in favour of a nationally consistent approach to regulation of property investment advisers, increased disclosure in contracts and the removal of unfair contractual provisions, particularly in regard to domestic building contracts. Of particular importance is increased consumer awareness of the risks associated with property investment and the need for disclosure concerning commission. The BSA is also conscious of the need to warn building contractors of the risks associated with rapid expansion beyond their managerial and financial capacities.

The BSA has reviewed the Report of the Law Reform Committee to the Parliament of Victoria, "Inquiry in Property Investment Advisers and Marketeers" published in April 2008 and supports in principle its recommendations for action by the Ministerial Council on Consumer Affairs in relation to the regulation of property investment advisors or, in the alternative, action by State Governments to provide increased consumer protection. Following the failure of Real Property Constructions in February this year, the Honourable Robert Swarten MP issued a statement in the Queensland Parliament to warn building contractors of the risks of becoming involved with wealth creation companies.

The BSA intends to pursue its inquiries into the effect of property spruikers on the Queensland building industry and will be making submissions to the Minister concerning proposed amendments to the *Domestic Building Contracts Act 2000* in due course.

Recommendation 1

2.97 The Committee recommends that the regulation of property investment advice, but not of real property or real estate transactions generally, should be a Commonwealth responsibility.

Comment:

The BSA's investigations indicate that property spruikers target interstate investors who may be persuaded to take one trip interstate to look at properties for sale but be unaware of the real market values in Queensland and not in a position to visit a construction site on a regular basis. Commonwealth legislation would address this issue.

Recommendation 2

3.54 The Committee recommends that Chapter 7 of the Corporations Act 2001 be amended to include real property as a separate asset class.

Comment: Agree. Investors and consumers are generally aware that real estate agents clearly acting on behalf of sellers are not in the business of providing investment advice to buyers.

However investors and consumers assume that buyers agents who purport to be acting on their behalf (although they accept commission from the vendors and others) will provide them with investment advice. In some cases, those buyers' agents may be licensed real estate agents or closely associated with licensed real estate agents but they step outside the accepted role of real estate agents when they advise consumers on investment and related issues such as negative gearing.

Recommendation 3

3.55 The Committee recommends that a definition of property investment advice should be inserted into the Corporations Act 2001. This definition should make it clear that property investment advice encompasses representations about the future value of, or income from, a property. It does not include statements about the past or present income from the property.

Comment: Where rent is guaranteed at a certain rate for a period of time as part of the sale, investors may conclude that they can reasonably expect to rent the property at the same or an increased rate in the future. Representations about guaranteed rental payments should fall within the definition of representations about the future value of or income from a property.

Recommendation 4

3.56 The Committee recommends that anyone providing property investment advice should have an Australian Financial Services Licence unless:

- **They give advice during a university course or similar approved training course; or**
- **They are an accountant, solicitor or valuer giving information in the course of their professional activities; or**
- **They are making fair comment in the mass media, where the comment is not made in the course of soliciting customers for any good or service.**

Comment: Some property spruikers purport to be provided training in wealth creation or investments but are closely affiliated with real estate agencies and property developers. Exemptions for courses would need to be severely restricted to exclude property spruikers.

Recommendation 5

3.70 The Committee recommends that, where property spruikers contravene the Trade Practices Act, the courts should be able to make an order compelling the spruiker to issue refunds to consumers either identified individually or as a class.

Comment: Agree.

Recommendation 6

3.82 The Committee recommends that the Treasurer should examine the utility of providing the ACCC with cease and desist powers to prevent spruiking activity which, if conducted, would contravene any provision of the *Trade Practices Act 1974*.

Comment: Agree

Recommendation 7

4.7 The Committee recommends that in implementing the recommendations of the 2004 Consumer and Financial Literacy Taskforce, the Government includes a stronger focus on property investment.

Comment: The BSA supports this recommendation.

Recommendation 8

4.8 The Committee recommends that the Government continue and expand its programs to enhance financial literacy among consumers and to increase financial advice available to consumers.

Comment: The BSA supports this recommendation and will continue to provide consumer and contractor education on this issue.

For further information, please contact Mrs Dianne Clift, Senior Executive Liaison Officer, Queensland Building Services Authority on 3247 5833.

Yours faithfully



Ian Jennings
General Manager
Queensland Building Services Authority
Ph: 3225 2930
Email: Ian.Jennings@bsa.qld.gov.au